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File #: 180693

March 11, 2021

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

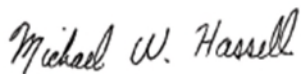
**Re: Petition of Peoples Natural Gas Company LLC for Accounting and Regulatory  
Approvals and Approval of Related Tariff Surcredits Associated with Tax Repair  
Election - Docket No. P-2020-3021191**

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Dear Secretary Chiavetta:

Attached for filing, on behalf of Peoples Natural Gas Company LLC, is the Joint Petition for Settlement and Statements in Support in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Very truly yours,



Michael W. Hassell

MWH/cls  
Attachments

cc: Honorable Mark A. Hoyer  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

### VIA E-MAIL ONLY

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Date: March 11, 2021

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Michael W. Hassell

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Peoples Natural Gas Company	:	
LLC for Accounting and Regulatory	:	
Approvals and Approval of Related Tariff	:	Docket No. P-2020-3021191
Surcredits Associated with Tax Repair	:	
Election	:	

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**JOINT PETITION FOR SETTLEMENT**

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**TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE MARK A. HOYER:**

Peoples Natural Gas Company LLC (“Peoples Natural Gas” or the “Company”), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”), all parties to the above-captioned proceeding (hereinafter, collectively referred to as the “Joint Petitioners”), hereby file this Joint Petition for Settlement of the above-referenced proceeding (“Settlement”).<sup>1</sup> The Joint Petitioners respectfully request that Deputy Chief Administrative Law Judge Mark A. Hoyer (the “ALJ”) recommend approval of, and the Commission approve, this Settlement as set forth below without modification.

As explained below, the Joint Petitioners agree that the settlement resolves all of the issues that have been raised in the proceeding concerning Peoples Natural Gas’s Petition for Accounting and Regulatory Approvals and Approval of Related Tariff Surcredits Associated with Tax Repair Election (“Petition”) at Docket No. P-2020-3021191.

Subject to the terms of the Settlement, the Joint Petitioners request that the Commission:

(1) authorize Peoples Natural Gas to file the form of tariff supplement provided as Appendix A

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<sup>1</sup> The Pennsylvania Independent Oil & Gas Association (“PIOGA”) also is a party to these proceedings, and does not object to the Settlement.

hereto, with rates to become effective within ninety (90) days of the Commission’s approval of this Settlement without modification. In support of this Settlement, the Joint Petitioners state the following:

## **I. INTRODUCTION**

1. Peoples Natural Gas is a limited liability company formed under the laws of the Commonwealth of Pennsylvania for the purpose of providing natural gas transmission, distribution, and supplier of last resort services subject to the Commission’s regulatory jurisdiction.

2. On August 6, 2020, Peoples Natural Gas filed its Petition at the above-captioned docket. The Petition contained a voluntary proposal by Peoples Natural Gas to use the benefits of the catch-up deduction resulting from its tax repair election<sup>2</sup> to provide immediate rate reductions and longer-term base rate relief in the form of an extended stay out between base rate proceedings, while maintaining the Company’s accelerated replacement of at-risk pipe without filing for a base rate increase until at least 2024.

3. On March 5, 2020, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance at Docket No. R-2020-3017850.

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<sup>2</sup> On March 31, 2020, effective for the tax year ended December 31, 2020, Peoples Natural Gas made an election to define its units of property under the Internal Revenue Service’s (“IRS”) tangible property regulations, which allows the Company to prospectively deduct, as an operating expense on its income tax returns, the costs of certain asset improvements that otherwise would be capitalized and depreciated for income tax purposes (the “tax repair election”). As a result of making the tax repair election, the Company also is permitted to claim a one-time “catch-up deduction” that involves a restatement of the Company’s tax books and records back to 2012 to conform to what they would have looked like if the new method had always been used. The effect of the catch-up deduction is an additional tax deduction of approximately \$380.7 Million, which will be claimed as a deduction on the Company’s 2020 Federal and State income tax returns. Peoples Natural Gas is currently in a Net Operating Loss (“NOL”) position, which will prevent it from currently receiving the benefit of the catch-up deduction.

4. On August 26, 2020, answers to the Company's Petition were respectively filed by I&E, OCA and OSBA. OSBA further filed and served a Notice of Appearance. A Petition to Intervene also was filed by PIOGA.

5. On September 15, 2020, the Commission issued a Telephonic Prehearing Conference Notice, which scheduled a telephonic prehearing conference for October 7, 2020. Thereafter, on September 17, 2020, the ALJ issued a Prehearing Conference Order, directing the parties to file Prehearing Memoranda on or before October 6, 2020.

6. On October 7, 2020, the prehearing conference was held as scheduled.

7. On October 8, 2020, the ALJ issued a Prehearing Order, which establish a litigation schedule and specific modifications to the Commission's discovery regulations that had been agreed upon by the parties.

8. On October 22, 2020, Peoples Natural Gas served its written direct testimony.

9. On December 4, 2020, I&E, OCA and OSBA each respectively served their written direct testimony and associated exhibits. PIOGA did not serve direct testimony.

10. On January 6, 2021, Peoples Natural Gas served its written rebuttal testimony.<sup>3</sup>

11. On January 21, 2021, I&E, OCA and OSBA each respectively served their written surrebuttal testimony and associated exhibits. PIOGA did not serve surrebuttal testimony.

12. On January 25, 2021, Peoples Natural Gas served its written rejoinder testimony, pursuant to the mutual agreement of the parties.

13. On January 27, 2021, the parties all participated in the telephonic evidentiary hearings scheduled in this matter. Pursuant to the agreement of the parties, cross-examination of

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<sup>3</sup> On January 12, 2021, Peoples Natural Gas served a corrected page 27 to PNG Statement No. 1-R for both the public and CONFIDENTIAL version of this piece of testimony.

all witnesses was waived and each party moved its respective testimony and exhibits into the record by verification, without objection.

14. In accordance with the Commission's Rules of Practice and Procedures, 52 Pa. Code § 5.231, the parties engaged in settlement discussions. As a result of those conferences, the Joint Petitioners were able to reach a settlement in principle of all issues prior to the date for filing Main Briefs.

15. On February 17, 2021, Peoples Natural Gas informed the ALJ that the parties had reached a Settlement of the issues in this proceeding. The Company, with agreement of the parties, requested that the ALJ suspend the briefing schedule, pending submission of a written settlement agreement. The Company, with agreement of the parties, further requested that the Joint Petitioners be permitted to file the Settlement no later than March 11, 2021. The ALJ granted these requests.

## **II. SETTLEMENT**

16. The Joint Petitioners are in full agreement that the Settlement is in the best interest of Peoples Natural Gas, the Joint Petitioners, and Peoples Natural Gas's customers. The terms of the Settlement are set forth below.

17. Peoples Natural Gas's above-captioned Petition is approved except as modified herein.

- (a) Treatment Of The Catch-Up Deduction. Peoples Natural Gas's proposed treatment of the approximately \$380.7 Million catch-up deduction associated with its tax repairs election is modified as follows. The actual amount of the catch-up deduction will be based upon the amount reported on the 2020 tax return as filed:

(i) One hundred percent (100%) of the benefit from the approximately \$380.7 Million catch-up deduction will be used to provide a surcredit to customers. The surcredit is designed to provide a rate reduction of approximately \$27.845 Million per year over five years, beginning within 90 days after an Order is issued in this proceeding.

(ii) The Rider Tax Repair Surcredit (“Rider TRS”) will be credited to customers’ bills by application to both customer charges and base rate delivery charges, and flexible rate customers will not be eligible for the surcredit, as set forth in attached Appendix A.

(b) Treatment Of The Current And Going-Forward Benefits. The effects of the current and going forward tax deduction of Peoples Natural Gas’s tax repairs election will continue to flow-through the Company’s financials until the effective date of rates established in the Company’s next base rate case filing.

(c) Revenue Requirement In Next Base Rate Proceeding. Peoples Natural Gas will reflect the ongoing repair benefit in the Company’s calculation of income tax expense (*i.e.* reduced effective income tax rate) in its revenue requirement in its next base rate proceeding.

(d) Rate Case Filing. Peoples Natural Gas affirmatively commits that it will file a base rate proceeding no later than December 31, 2023. As part of that filing, Peoples Natural Gas will propose a tracker mechanism to account for variances between the estimated net tax repair benefit incorporated into the Company’s revenue requirement and the actual net tax repair benefit realized on the

Company's tax returns on a going-forward basis from the effective date of new base rates, similar to the tracker mechanism adopted in the settlement of the Aqua Pennsylvania, Inc. base rate case at Docket No. R-2018-3003558. A copy of that settlement term is attached as Appendix B hereto for illustrative purposes. The proposed tracker mechanism will require the Company to return or recoup the tax benefits associated with these variances to customers in an expeditious manner. This filing commitment is not intended to affect the rights of other parties to this Settlement to oppose any proposals presented by the Company or to offer alternative proposals in that rate case.

- (e) Subsequent Changes to Benefit of Catch-Up Deduction. To the extent that the benefit of the Company's catch-up deduction is affected by: (i) any subsequent disallowance by a future IRS audit; (ii) any changes in tax rate; or (iii) any change in rules or guidance that require a method change and, therefore, a change of benefit, permission is granted to defer those impacts for future refund or recovery for customers.
- (f) Distribution System Improvement Charge ("DSIC"). Nothing herein is intended to alter the operation of the current DSIC mechanism, including the earnings cap and the rate cap. The Company may also implement a DSIC in 2023 pursuant to Commission regulations.
- (g) Uncollectible Accounts Expense. By Secretarial Letter dated May 13, 2020, at Docket No. M-2020-3019775, the Company was authorized to establish a regulatory asset for incremental uncollectible account expenses incurred above those embedded in rates since the entry of the Commission's Emergency Order



ratified March 26, 2020 at Docket No. M-2020-3019244. In consideration of this Settlement, the Company agrees to provide a credit to all rate classes that have aged past due balances starting in March 2020. The total credit to be provided shall total \$5.0 million and will be funded by the Company's shareholders. The credit would equate to a maximum of 70% of the past due balance on an eligible customer's bill since March 2020. This is effectively a forgiveness of a portion of arrearages accumulated during and occasioned by the COVID-19 pandemic. The Company will provide information on the credit methodology and application to the Joint Petitioners prior to implementation. Customer collections would continue on arrearages remaining after the credit is applied pursuant to the Commission's regulations; however, the Company will work to enroll eligible customers in available programs to provide payment assistance, including but not limited to its customer assistance program, the Low Income Home Energy Assistance Program ("LIHEAP"), and Dollar Energy.

- (h) Low-Income Assistance. The Company further agrees to provide a non-rate recoverable contribution of \$500,000 to Dollar Energy. The Company shall expand Dollar Energy's income eligibility requirements to 250% of the Federal Poverty Income Guidelines ("FPIG") through December 31, 2021.

### **III. THE PUBLIC INTEREST**

18. This Settlement was achieved by the Joint Petitioners after an extensive investigation of Peoples Natural Gas's filing, including extensive informal and formal discovery and the service of written direct testimony by Peoples Natural Gas, I&E, OCA and OSBA, written

rebuttal testimony by Peoples Natural Gas, written surrebuttal testimony by I&E, OCA and OSBA, and written rejoinder testimony by Peoples Natural Gas.

19. Acceptance of the Settlement avoids the necessity and costs of further administrative and potential appellate proceedings.

20. The Settlement provides for surcredits to customers estimated to equal 6.5680% of base rate charges, as well as an additional credit of \$5.0 million to customers who have developed arrearages since March, 2020 and \$500,000 to the Dollar Energy Fund, thereby providing relief during the current COVID-19 pandemic.

21. Attached as Appendices C through F are Statements in Support submitted by Peoples Natural Gas, I&E, OCA and OSBA, setting forth the bases upon which they believe the Settlement is in the public interest. Also attached as Appendix G is a letter of non-opposition to the Settlement from PIOGA.

#### **IV. CONDITIONS OF SETTLEMENT**

22. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Settlement without modification. This Settlement shall become effective on the date on which the Commission enters a final order that adopts the terms and conditions of this Settlement. If the Commission enters a final order that approves this Settlement, but with one or more modifications, this Settlement shall nonetheless become effective unless one or more of the Joint Petitioners elects to withdraw from the Settlement. Such election to withdraw must be made in writing, filed with the Secretary of the Commission, and served upon all parties within five business days after the entry of an Order modifying the Settlement. In such event, the Settlement shall be void and of no effect.

23. The Joint Petitioners acknowledge and agree that this Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding resulting in the establishment of rates that are just and reasonable.

24. This Settlement is proposed by the Joint Petitioners to settle all of their issues in the instant proceeding. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective rights to present full briefing and argument. The Settlement is made without any admission against, or prejudice to, any position that any party may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

25. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

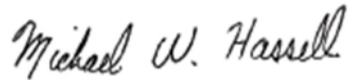
26. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner which is fair and reasonable. The Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Settlement. This Settlement does not preclude the Joint Petitioners from taking other positions in proceedings of other public utilities.

## **V. CONCLUSION**

WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request that the Honorable Deputy Chief Administrative Law Judge Mark A. Hoyer recommend approval of

and the Commission approve this Settlement, including all terms and conditions thereof without modification.

Respectfully submitted,



Date: 3/11/2021

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Michael W. Gang, Esquire  
Michael W. Hassell, Esquire  
Garrett P. Lent, Esquire  
Post & Schell, P.C.  
17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601

William H. Roberts II, Esquire  
Peoples Natural Gas Company LLC  
375 North Shore Drive  
Pittsburgh, PA 15212

Kimberly A. Joyce, Esquire  
Essential Utilities, Inc.  
762 West Lancaster Avenue  
Bryn Mawr, PA 19010  
Phone: 610-883-3894  
E-mail: kajoyce@essential.co

*For Peoples Natural Gas Company LLC*

Date: \_\_\_\_\_

---

Darryl A. Lawrence, Esquire  
Phillip D. Demanchick, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

*For Office of Consumer Advocate*

and the Commission approve this Settlement, including all terms and conditions thereof without modification.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael W. Gang, Esquire  
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Phone: 610-883-3894  
E-mail: kajoyce@essential.co

*For Peoples Natural Gas Company LLC*

\_\_\_\_\_  
/s/Phillip D. Demanchick

Date: 03/11/2021

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*For Office of Consumer Advocate*

Carrie B Wright

Date: 3/11/2021

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*For Bureau of Investigation and Enforcement*

Date: \_\_\_\_\_

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Harrisburg, PA 17101

*For Office of Small Business Advocate*

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Harrisburg, PA 17105-3265

Date: \_\_\_\_\_

*For Bureau of Investigation and Enforcement*

/s/ Steven C. Gray

\_\_\_\_\_  
Steven C. Gray, Esquire  
Office of Small Business Advocate  
Forum Place  
555 Walnut Street, 1<sup>st</sup> Floor  
Harrisburg, PA 17101

Date: March 11, 2021

*For Office of Small Business Advocate*

# Appendix A



# PEOPLES NATURAL GAS COMPANY LLC

## RATES AND RULES GOVERNING THE FURNISHING OF NATURAL GAS SERVICE TO RETAIL GAS CUSTOMERS

Rider Tax Repairs Surcredit

ISSUED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_

BY: Michael Huwar  
President  
375 North Shore Drive  
Pittsburgh, PA 15212

## NOTICE

This tariff makes changes to existing rates.  
(See page 2)

LIST OF CHANGES

	<u>Current</u>	<u>Proposed</u>	<u>Increase/ (Decrease)</u>
<u>Rider Tax Repairs Surcredit (TRS)</u>	0%	(6.5680%)	(6.5680%)

Tax Repairs Surcredit	Rider Purchased Gas Costs				Base Rate Charges	Rider STAS	Rider MFC	Rider Supplier Choice	Rider USR	Rider GPC	Rider DSIC Charge	Rider TRS	Total Rate (13=SUM 1 to 12)
	Capacity	AVC Capacity	GCA	Commodity									
	(1)	(2)	(3)	(4)									
<b>Residential Sales</b>						0.10%							
Customer Charge					\$ 14.5000			\$ 0.0151			\$ (0.0189)	\$ (0.9524)	\$ 13.5439
Capacity	\$ 1.0615	\$ 0.6727						\$ 0.0264					\$ 1.7606
Price to Compare - PTC			\$ (0.1238)	\$ 1.8812				\$ 0.0437		\$ 0.0801			\$ 1.8812
Commodity Credit													\$ -
Delivery Charge					\$ 3.9608				\$ 0.2120		\$ (0.0056)	\$ (0.2601)	\$ 3.9070
State Tax Surcharge						\$ 0.0040							\$ 0.0040
Total per MCF				\$ 1.8812			\$ 0.0701						\$ 7.5528
<b>Small General Service (SGS)</b>													
Customer Charge													
0 to 499 MCF/Yr					\$ 20.0000			\$ 0.0151			\$ (0.0260)	\$ (1.3136)	\$ 18.6755
500 to 999 MCF/Yr					\$ 40.0000			\$ 0.0151			\$ (0.0520)	\$ (2.6272)	\$ 37.3359
1/ Capacity	\$ 0.3985	\$ 0.7172											\$ 1.1157
Price to Compare - PTC	\$ 0.6630		\$ (0.1238)	\$ 1.8812			\$ 0.0059		\$ 0.0801				\$ 2.5064
Commodity Credit													\$ -
Delivery Charge					\$ 2.7000						\$ (0.0036)	\$ (0.1773)	\$ 2.5190
State Tax Surcharge						\$ 0.0027							\$ 0.0027
Total per MCF	\$ 1.0615			\$ 1.8812			\$ 0.0059						\$ 6.1438
<b>Medium General Service (MGS)</b>													
Customer Charge													
1,000 to 2,499 MCF/Yr					\$ 85.0000						\$ (0.1105)	\$ (5.5828)	\$ 79.3067
2,500 to 24,999 MCF/Yr					\$ 130.0000						\$ (0.1690)	\$ (8.5384)	\$ 121.2926
1/ Capacity	\$ 0.3982	\$ 0.4022											\$ 0.8004
Price to Compare - PTC	\$ 0.6633		\$ (0.1238)	\$ 1.8812			\$ 0.0059		\$ 0.0801				\$ 2.5067
Commodity Credit													\$ -
Delivery Charge					\$ 2.6914						\$ (0.0036)	\$ (0.1768)	\$ 2.5110
State Tax Surcharge						\$ 0.0027							\$ 0.0027
Total per MCF	\$ 1.0615			\$ 1.8812			\$ 0.0059						\$ 5.8208
<b>Large General Service (LGS)</b>													
Customer Charge													
25,000 to 49,999 MCF/Yr					\$ 575.0000						\$ (0.7475)	\$ (37.7661)	\$ 536.4864
50,000 to 99,999 MCF/Yr					\$ 750.0000						\$ (0.9750)	\$ (49.2601)	\$ 699.7649
100,000 to 199,999 MCF/Yr					\$ 1,400.0000						\$ (1.8200)	\$ (91.9522)	\$ 1,306.2278
Over 200,000 MCF/Yr					\$ 1,600.0000						\$ (2.0800)	\$ (105.0882)	\$ 1,492.8318
1/ Capacity	\$ 0.1054	\$ 0.2156											\$ 0.3210
Price to Compare - PTC	\$ 0.9561		\$ (0.1238)	\$ 1.8812			\$ 0.0059		\$ 0.0801				\$ 2.7995
Commodity Credit													\$ -
Delivery Charge													
25,000 - 49,999 MCF/Yr					\$ 2.6411	\$ 0.0026					\$ (0.0035)	\$ (0.1735)	\$ 2.4667
50,000 - 99,999 MCF/Yr					\$ 2.5773	\$ 0.0026					\$ (0.0035)	\$ (0.1693)	\$ 2.4071
100,000 - 199,999 MCF/Yr					\$ 2.5694	\$ 0.0026					\$ (0.0035)	\$ (0.1688)	\$ 2.3998
200,000 to 749,999 MCF/Yr					\$ 2.4999	\$ 0.0025					\$ (0.0034)	\$ (0.1642)	\$ 2.3348
750,000 to 1,999,999 MCF/Yr					\$ 2.1327	\$ 0.0021					\$ (0.0029)	\$ (0.1401)	\$ 1.9919
Over 2,000,000 MCF/Yr					\$ 1.6445	\$ 0.0016					\$ (0.0022)	\$ (0.1080)	\$ 1.5359
2/ Total per MCF	\$ 1.0615			\$ 1.8812			\$ 0.0059						\$ 5.5872

1/ The Price-to-Compare format as shown is applicable to a Non-Priority One customer; the Price-to-Compare Charge for a Priority One customer would not include the Capacity Charge

See the Residential - Sales section above as an example of Priority One.

2/ The Total per Mcf displayed for Retail LGS is representative of the 25,000 - 49,999 MCF/Yr delivery charge tier only.

3/ The above rates are for non-transitional customers. For transitional customer rates, refer to the corresponding rate schedule found in the Company's retail tariff.

Tax Repairs Surcredit	Base Rate Charges	Rider STAS	Rider MFC	Rider USR	Rider Purchased Gas Costs		BB&A	Rider Supplier Choice	Rider DSIC Charge	Rider TRS	Total Rate
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11=SUM 1 to 10)
<b>Rate GS-T Residential</b>		0.10%							-0.13%	-6.5680%	
Customer Charge	\$ 14.5000							\$ 0.0151	\$ (0.0189)	\$ (0.9524)	\$ 13.5439
Capacity			\$ 0.0264		\$ 1.0615	\$ 0.6727					\$ 1.7606
Delivery Charge	\$ 3.9608			\$ 0.2120					\$ (0.0055)	\$ (0.2601)	\$ 3.9072
State Tax Surcharge		\$ 0.0040									\$ 0.0040
Total per MCF											\$ 5.6718
<b>Rate GS-Transportation SGS</b>											
Customer Charge											
0 to 499 MCF/Yr	\$ 20.0000							\$ 0.0151	\$ (0.0260)	\$ (1.3136)	\$ 18.6755
500 to 999 MCF/Yr	\$ 40.0000							\$ 0.0151	\$ (0.0520)	\$ (2.6272)	\$ 37.3359
1/ Capacity/BB&A					\$ 0.7172	\$ 0.3982					\$ 1.1154
Delivery Charge	\$ 2.7000								\$ (0.0035)	\$ (0.1773)	\$ 2.5192
State Tax Surcharge		\$ 0.0027									\$ 0.0027
Total per MCF											\$ 3.6373
<b>Rate GS-Transportation MGS</b>											
Customer Charge											
1,000 to 2,499 MCF/Yr	\$ 85.0000								\$ (0.1105)	\$ (5.5828)	\$ 79.3067
2,500 to 24,999 MCF/Yr	\$ 130.0000								\$ (0.1690)	\$ (8.5384)	\$ 121.2926
1/ Capacity/BB&A					\$ 0.4022	\$ 0.3982					\$ 0.8004
Delivery Charge	\$ 2.6914								\$ (0.0035)	\$ (0.1768)	\$ 2.5111
State Tax Surcharge		\$ 0.0027									\$ 0.0027
Total per MCF											\$ 3.3142
<b>Rate GS-Transportation LGS</b>											
Customer Charge											
25,000 to 49,999 MCF/Yr	\$ 575.0000								\$ (0.7475)	\$ (37.7661)	\$ 536.4864
50,000 to 99,999 MCF/Yr	\$ 750.0000								\$ (0.9750)	\$ (49.2601)	\$ 699.7649
100,000 to 199,999 MCF/Yr	\$ 1,400.0000								\$ (1.8200)	\$ (91.9522)	\$ 1,306.2278
Over 200,000 MCF/Yr	\$ 1,600.0000								\$ (2.0800)	\$ (105.0882)	\$ 1,492.8318
1/ Capacity/BB&A					\$ 0.2156	\$ 0.1054					\$ 0.3210
Delivery Charge											
25,000 - 49,999 MCF/Yr	\$ 2.6411	\$ 0.0026							\$ (0.0034)	\$ (0.1735)	\$ 2.4668
50,000 - 99,999 MCF/Yr	\$ 2.5773	\$ 0.0026							\$ (0.0034)	\$ (0.1693)	\$ 2.4072
100,000 - 199,999 MCF/Yr	\$ 2.5694	\$ 0.0026							\$ (0.0033)	\$ (0.1688)	\$ 2.3999
200,000 to 749,999 MCF/Yr	\$ 2.4999	\$ 0.0025							\$ (0.0032)	\$ (0.1642)	\$ 2.3350
750,000 to 1,999,999 MCF/Yr	\$ 2.1327	\$ 0.0021							\$ (0.0028)	\$ (0.1401)	\$ 1.9920
Over 2,000,000 MCF/Yr	\$ 1.6445	\$ 0.0016							\$ (0.0021)	\$ (0.1080)	\$ 1.5360
2/ Total per MCF											\$ 2.7878

1/ The Capacity Charge applies to Priority 1 ratepayers when electing transport service. All other Ratepayers are billed the BB&A charge.

2/ The Total per Mcf displayed for Transport LGS is representative of the 25,000 - 49,999 MCF/Yr delivery charge tier only.

3/ The above rates are for non-transitional customers. For transitional customer rates, refer to the corresponding rate schedule found in the Company's retail tariff.

ISSUED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_

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**RIDER**  
**TAX REPAIRS SURCREDIT (TRS)**

(C)

Pursuant to Docket No. P-2020-3021191, there shall be a surcredit of negative 6.5680% percent applied to the customer charge and the base rate delivery charge under all rate schedules served by this tariff. Any customer receiving a discounted flexible delivery charge rate will not be eligible for the surcredit.

**Purpose:** The purpose of this surcredit is to refund, over a five-year period, the entire tax benefit of a catch-up tax deduction resulting from the Company's defining its unit of property under the Internal Revenue Service's Treasury Regulations 1.263(a)-3 and 1.162-4. This catch-up deduction or "look back" represents the difference between federal and state income tax depreciation claimed versus the repair deductions that would have been claimed for the tax years ended December 31, 2012 through March 15, 2020.

**Effective Date:** Beginning with service rendered \_\_\_\_\_, 2021(90 Days after an Order is issued in the Proceeding at Docket P-2020-3021191).

**Calculation:** The annual amount of the surcredit will be approximately \$27.845 Million, equal to 100% of the tax benefit from the catch-up tax deduction of approximately \$380.7 million refunded over a five year period.

**Reconciliation:** In accordance with Section 1307(e) of the Public Utility Code, the Company shall provide a reconciliation of the amount refunded and the tax benefit of the catch up deduction for the twelve month period ended December 31. The rate will be adjusted annually for the resulting over/undercollection to be effective April 1. The annual reconciliation will be filed by March 21 for the preceding calendar year.

Interest on over or under collections shall be computed monthly at the residential mortgage lending rate specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41 P.S. §§ 101, et seq.) from the month that the over or under collection occurs to the mid-point of the recoup or refund period.

This surcredit will remain in place for six years (five years of refund period and one year for a final reconciliation period). Any over or under ratepayer surcredit amounts remaining at the end of year five shall be flowed through to Customers in the Company's next quarterly 1307(f) gas cost filing. Within 60 days of termination of the distribution of the rate credit, the Company shall file with the Commission and provide a copy to all parties to Docket No. P-2020-3021191 a final reconciliation of all surcredit amounts.

Upon determination that this surcredit, if left unchanged, would result in a material over or under collection, the Company may file with the Commission, on at least 10 days' notice, for an interim revision of this surcredit.

ISSUED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_

# Appendix B

30. *Tax Repairs Deductions.* The Joint Petitioners agree that the revenue requirement incorporates a reduction to current state and Federal income tax expense based on net repairs deductions in the FPFTY of \$154,514,546 for the water utility and \$4,350,142 for the wastewater utility, for a total of \$158,864,688.

a. If the net repairs deductions for Aqua vary by more than \$3 million above or below that \$158,864,688 amount (i.e. below \$155,864,688 or above \$161,864,688), Aqua will record a regulatory liability or asset for the related income tax expense impacts of the repairs deduction variations below or above \$158,864,688.

b. Aqua shall report on the regulatory asset or liability amounts of the net repairs deduction income tax impacts in its quarterly earnings reports after the conclusion of the FPFTY. Within 30 days of reporting a regulatory liability with a net cumulative income tax impact amount of \$10 million or larger, Aqua shall file with the Commission and shall copy OCA, I&E, and OSBA, a plan for refunding the regulatory liability amount to customers.

c. If there are remaining deferrals of the differences in income tax expense for Aqua's net repairs deductions, that balance shall be addressed in Aqua's next base rate case based on the recorded regulatory asset and liability amounts.

d. Whether similar recording of the impact on current income tax expense from net repairs deduction variations above or below a collar in a regulatory liability or asset account should continue shall also be re-evaluated in Aqua's next base rate case.

**The above is a quoted excerpt of Paragraph 30 of the Joint Petition for Settlement in *Pa. PUC, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2018-3003558, R-2018-3003561, and *Joint Application of Aqua Pennsylvania, Inc. and its Subsidiary, Superior Water Co., Inc.*, Docket Nos. A-2018-3004108, A-2018-3004109.**



# Appendix C

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Peoples Natural Gas Company	:	
LLC for Accounting and Regulatory	:	
Approvals and Approval of Related Tariff	:	Docket No. P-2020-3021191
Surcredits Associated with Tax Repair	:	
Election	:	

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**PEOPLES NATURAL GAS COMPANY LLC'S  
STATEMENT IN SUPPORT OF THE  
JOINT PETITION FOR SETTLEMENT**

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**I. INTRODUCTION**

Peoples Natural Gas Company LLC (“Peoples Natural Gas” or the “Company”) hereby files this Statement in Support of the Joint Petition for Settlement (“Settlement”) entered into by Peoples Natural Gas, the Bureau of Investigation & Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”) (collectively, “Joint Petitioners”) in the above-captioned proceeding.<sup>1</sup> Peoples Natural Gas respectfully requests that Deputy Chief Administrative Law Judge Mark A. Hoyer (the “ALJ”) recommend approval of, and the Commission approve, the Settlement, including the terms and conditions thereof, without modification.

The Settlement, if approved, will resolve all of the issues raised by the Company’s filing and the Joint Petitioners in this proceeding. The Settlement provides substantial, immediate and

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<sup>1</sup> The Pennsylvania Independent Oil & Gas Association (“PIOGA”) also is a party to these proceedings, and does not object to the Settlement.

extended benefits to customers and is in the public interest. Thus, it should be approved without modification.

The Settlement was achieved only after a comprehensive investigation of Peoples Natural Gas's proposals to provide substantial benefits to customers resulting from the Company's tax repair election. In addition to a comprehensive filing, Peoples Natural Gas responded to numerous formal discovery requests. In support of their positions, Peoples Natural Gas, I&E, OCA and OSBA served multiple rounds of testimony and accompanying exhibits. The Joint Petitioners participated in numerous settlement discussions and formal negotiations, which ultimately led to the Settlement.

Finally, the Joint Petitioners, as well as their experts and counsel, have considerable experience in proceedings involving tax repair elections by public utilities. Their knowledge, experience, and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on the settled issues.

For these reasons and the reasons set forth below, the Settlement is just and reasonable, and Peoples Natural Gas's Petition for Accounting and Regulatory Approvals and Approval of Related Tariff Surcredits Associated with Tax Repair Election ("Tax Repair Petition"), as modified by the Settlement, should be approved.

## **II. COMMISSION POLICY FAVORS SETTLEMENT**

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231(a). Settlements reduce the time and expense that the parties must expend litigating a case and, at the same time, conserve administrative resources. The Commission has stated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401. To accept a settlement, the Commission must first determine that the proposed terms

and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order Entered Oct. 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991). As explained herein, the terms of the Settlement are in the public interest and should be adopted without modification.

### **III. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

The parties had substantially divergent positions in their testimonies. However, through substantial efforts, the Joint Petitioners were able to craft a carefully-balanced compromise of the interests of all of the Joint Petitioners. The resulting Settlement is in the public interest and should be approved without modification.

#### **A. DESCRIPTION OF THE COMPANY'S TAX REPAIR ELECTION AND ITS TAX REPAIR PETITION**

On March 31, 2020, effective for the tax year ended December 31, 2020, Peoples Natural Gas made an election to define its units of property under the Internal Revenue Service's ("IRS") tangible property regulations, which allow the Company to prospectively deduct, as an operating expense on its income tax returns, the costs of certain asset improvements that otherwise would be capitalized and depreciated for income tax purposes and that are capitalized on the Company's books of account.

Generally, work performed on an asset to keep it in normal working condition which does not materially extend its life, increase its value or change its use qualifies as a repair for income tax purposes. PNG St. 1 at 4.<sup>2</sup> Expenditures for incidental repairs are usually deductible as an expense when incurred for income tax purposes. PNG St. 1 at 4-5. The "repair" test is applied to a "unit of property," in order to distinguish between repairs (which are deductible for

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<sup>2</sup> These standards are often referred to as betterment standards. PNG St. 1 at 4.

tax purposes as an expense) and capital costs (which are depreciated over the tax life of the property). PNG St. 1 at 5.<sup>3</sup>

With respect to “network assets,” which include natural gas pipelines, Section 1.23(a)-3(e)(3)(iii)(B) of the Treasury Regulations states:

(B) Unit of property for network assets. In the case of network assets, the unit of property is determined by the taxpayer's particular facts and circumstances except as otherwise provided in published guidance in the federal register or in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter). For these purposes, the functional interdependence standard provided in paragraph (e)(3)(i) of this section is not determinative.

26 C.F.R. § 1.23(a)-3(e)(3)(iii)(B).

Prior to tax year 2020, Peoples Natural Gas did not have a defined unit of property and, therefore, its tax accounting mirrored book accounting regarding the capitalization or expensing of work performed. PNG St. 1 at 7. By filing IRS Form 3115 in 2020, Peoples Natural Gas adopted revised definitions of units of property for network assets by pressure zone and service

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<sup>3</sup> Company witness Mr. Packer offered the following example to make clear the concept of “repairs” and explained:

A simple illustration will make this clear. Take the changing of a truck's spark plugs. If each spark plug is defined as a separate unit of property, then the changing of 6 spark plugs represents the retirement of 6 units of property and the installation of 6 new units of property. Because the removal of a unit of property does not, by definition, keep that unit in its normal operating condition, the installation of a new unit of property is a capital cost and not a repair. Consequently, the installation of each spark plug would be a capital addition that would be depreciated over the tax life of the asset. By contrast, if the truck was defined as the unit of property, then the changing of spark plugs would not constitute the installation of new units of property. Because a tune-up (of which the spark plug replacements are a part) keeps the truck in its normal operating condition, it would meet the definition of a repair and, as such, be fully deductible as an expense when the repair occurs. Thus, the same work can produce radically different deductibility results for income tax purposes, depending on the definition of a unit of property.

PNG St. 1 at 5 (emphasis added).

lines. PNG St. 1 at 7.<sup>4</sup> After filing its Form 3115, Peoples Natural Gas will continue to record book assets pursuant to its existing capitalization policies to which there was no change. PNG St. 1 at 9. However, for tax purposes, the value of certain work may be deducted as a repair expense rather than creating a corresponding tax asset. PNG St. 1 at 9. The immediate deduction of that expense on the Company's future tax return results in a tax benefit timing difference. *See* PNG St. 1 at 9-10.

This change in method will be recorded on the Company's 2020 federal income tax return and has two material components. First, all costs incurred in 2020 that qualify as repairs under the Company's new accounting method (i.e., its use of larger units of property) will be deducted as an expense in the year incurred. PNG St. 1 at 10. This enhanced deduction will continue each year into the future and the benefits of this enhanced deduction are referred to as the "current and on-going benefits" of the tax repairs election.

Second, Peoples Natural Gas is permitted to claim a "Section 418(a)" adjustment, which is commonly referred to as the catch up deduction or "look back." The catch up deduction represents the difference between federal and state income tax depreciation deductions that were claimed versus the repair deductions that would have been claimed for the tax years ended December 31, 2012 through March 15, 2020. PNG St. 1 at 10. The catch up deduction is a "one time deduction," that involves a restatement of the Company's tax books and records to conform to what they would have looked like if the new method had always been used. PNG St. 1 at 11.<sup>5</sup> The effect of the catch up deduction, which is an additional tax deduction of approximately

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<sup>4</sup> Although the IRS's regulations invited the negotiation of a final determination and common definition of units of property for network assets for each industry group, no final guidance has been received by the natural gas industry. *See* PNG St. 1 at 7-8. Peoples Natural Gas has adopted a threshold of 10% of a linear unit of property as the dividing line between a repair and a replacement for income tax purposes. Most water and gas utilities that have defined a threshold are within the 5% to 15% range. PNG St. 1 at 9. The 10% threshold is consistent with the electric industry agreement with regard to the material threshold.

<sup>5</sup>The Company is permitted to reach back as far as its records can support and must also consider the amount of the remaining tax value on the assets it previously capitalized. PNG St. 1 at 11.

\$380.7 Million, will be claimed as a deduction on the Company's 2020 Federal and State income tax returns. However, the Company will not be able to use this deduction immediately to reduce its income tax liability because the Company is currently in a net operating loss ("NOL") position.

Peoples Natural Gas's Tax Repair Petition sought four approvals with respect to its proposed rate and accounting treatments of the benefits of the catch up deduction. First, the Company requested authorization to record a regulatory liability for 100% of the tax benefit of the \$380.7 Million catch up deduction. This deferral would be used in part to reduce customer rates and in part to provide an extended period of rate stability.

Second, the Company sought authorization to apply a surcredit, representing 40% of the benefit of the catch up deduction, to reduce base rate delivery charges on utility customer bills at an estimated rate of 4.54% over a period of four years.<sup>6</sup> PNG St. 1 at 17. The proposed surcredit would be subject to the annual true-up and reconciliation provisions of Section 1307(e) of the Public Utility Code, 66 Pa.C.S. § 1307(e). PNG St. 1 at 18.

Third, Peoples Natural Gas proposed to amortize, as a reduction to income tax expense, the remaining 60% of the tax benefits of the catch up deduction over a three-year period between 2023-2025. PNG St. 1 at 18. Specifically, the Company proposed that: (a) in year one (2023), 5% of the remaining portion of the regulatory liability would be amortized over 12 months; (b) in year two (2024), 35% of the remaining portion of the regulatory liability would be amortized over 12 months; and (c) in year three (2025), 60% of the remaining portion of the regulatory liability would be amortized over 12 months. PNG St. 1 at 18. This amortization proposal

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<sup>6</sup> As a result of changes to the Company's proposal as set forth in this Settlement, the surcredit percentage is now changed to an estimated rate of 6.568%.

would have enabled the Company to offer customers the certainty of an extended period of rate stability, with a base rate filing stay-out to at least January 1, 2024.

Fourth, to the extent that the benefit of the Company's catch up deduction is affected by (i) any subsequent disallowance by a future IRS audit, (ii) any changes in tax rate, or (iii) any change in rules or guidance that require a method change and, therefore, a change of benefit, the Company sought permission to defer those impacts for future refund or recovery for customers in the same proportion as the sharing proposed in the Petition. PNG St. 18-19.

The Company's proposals only extended to the catch up deduction and neither the Petition nor the Company's direct testimony included any proposals with respect to the treatment of the current and ongoing benefits of the repairs election. As explained below, the Company's position was that the ongoing accounting for the tax repair election is governed by the "actual taxes paid" doctrine.

## **B. TREATMENT OF THE CATCH UP DEDUCTION UNDER THE SETTLEMENT**

### **1. Portion of Catch Up Benefit to be Provided Through Surcredit**

In this proceeding, Peoples Natural Gas proposed to provide 40% of the benefit from the catch up deduction to customers through the surcredit, with the remainder to be used to provide rate stability through a base rate case stay out. I&E, OCA and OSBA opposed this proposal, and recommended that 100% of the benefit of the catch up deduction be provided to customers through the surcredit mechanism, with no rate case stay out.

The Company argued that its proposal to immediately return approximately 40% of the catch up deduction to customers over four years and its proposal to defer and amortize the remaining 60% of the deduction over a three-year period, with a guaranteed rate case stay out, would provide several important benefits.



Specifically, the Company explained that the immediate surcredit of 40% would enable the Company to provide an immediate benefit to customers during the COVID-19 pandemic that they would not otherwise receive, and also balance this immediate rate reduction with the Company's desire to provide customers with an extended term of rate stability at a time of substantial investment in Priority Pipe replacement. PNG St. 1 at 5. The Company explained that it already plans to invest an average of \$280.2 Million annually for the replacement and repair of mains and services from 2021 through 2025 under its recently approved Long-Term Infrastructure Improvement Plan ("LTIIIP").<sup>7</sup> The Company's proposal would permit these investments to occur without having to file a general rate increase for an extended period beyond its last increase.

To confirm the rate stability benefit the Company offered to agree to a base rate case filing stay-out to at least January 1, 2024, subject to the normal ratemaking exceptions, as a part of its rejoinder testimony. Assuming that new base rates would not become effective any earlier than approximately October 1, 2024, this would be roughly five years from the October 29, 2019 effective date of the Company's current base rates.

The Company further contended that its proposed treatment for 40% and 60% of the benefits of the catch up deduction also appropriately recognizes that, absent the Company's voluntary filing of the Petition, no immediate benefits resulting from the Company's tax repairs election would have accrued to customers. PNG St. 2 at 5. Indeed, various other utilities have elected the repair allowance without filing any petition with the Commission and, in these cases,

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<sup>7</sup> The recently approved LTIIIP includes further acceleration of the replacement of Priority Pipe, as committed to as part of the Commission-approved Settlement of the Aqua Acquisition Proceeding. This revised LTIIIP was filed with the Commission at Docket No. P-2020-3021942. See PNG Exhibit APW-2; see also *Petition of Peoples Natural Gas Company, LLC and Peoples Gas Company, LLC for Approval of a Second Combined Long-Term Infrastructure Improvement Plan*, Docket Nos. P-2020-3021942; P-2020-3022053 (Opinion and Order entered Jan. 14, 2021).

the treatment of the catch up deduction was addressed and reflected in the utility's next base rate proceeding. *See, e.g., Pa. PUC, et al. v. York Water Company*, Docket Nos. R-2018-3000019, et al. (Order entered Jan. 17, 2019); *Pa. PUC, et al. v. Columbia Gas of Pennsylvania*, Docket Nos. R-2009-2149262, et al. (Order entered Aug. 18, 2010) (approving settlement of base rate proceeding that recognized gas utility had previously made the tax repairs election, and subsequently sought ratemaking treatment in this proceeding). The Company further explained that because it is in an NOL position, it would be improper to direct the Company to provide an immediate refund of the benefits of the catch up deduction, as the Company is unable to currently monetize the benefits of the catch up deduction. Thus, the Company argued that its Tax Repair Petition would provide customers with an immediate benefit and rate reduction that would not have occurred but for this filing.

In the Settlement, the Joint Petitioners have agreed that 100% of the benefit of the catch up deduction will be used to provide a surcredit to customers. The Joint Petitioners further agreed to extend the period of the surcredit from four years to five years, in recognition of the substantially greater total credit to be provided and the fact that the Company is in an NOL position and will not receive a cash benefit of the catch up deduction for some time. The result is that the surcredit will provide a rate reduction of approximately \$27.845 million per year for five years, compared to the Company's proposal of approximately \$14 million per year over four years. Because 100% of the benefit of the catch up deduction will be provided to customers through the surcredit, the proposal for a rate case stay out has been withdrawn.

This provision of the Settlement is in the public interest and should be approved. Parties can reasonably disagree whether the benefits of the catch up deduction should be used to provide more current rate relief or more extended rate stability. The current situation facing many

customers, due to the effects of the COVID-19 pandemic, support using all of the benefits of the catch up deduction to provide rate reductions in the form of a surcredit. The Company still anticipates being able to avoid an immediate base rate filing as a result of the treatment of the current and going forward benefits, as explained later.

## **2. Revisions to Rider Tax Repair Surcredit**

As a part of the Tax Repair Petition, Peoples Natural Gas proposed to implement Rider Tax Repair Surcredit (“Rider TRS”) to provide the surcredit to its natural gas distribution service customers associated with the catch up deduction. The Company proposed to apply the surcredit as a negative percentage of a customer’s base rate delivery charge. The percentage surcredit as proposed by the Company would apply to all customers, and because it is computed as a percentage it automatically would adjust to provide a lower credit to customers with discounted delivery rates. PNG St. 2 at 7-8. In addition, Rider TRS provided for the reconciliation of over/under collections. Consistent with Section 1307(e) of the Public Utility Code, 66 Pa.C.S. § 1307(e), the Company would reconcile the amount refunded for each twelve-month period ended December 31 and adjust the surcredit for any resulting over/under collection to be effective April 1. Rider TRS provided that the reconciliation would be filed by March 21 for the preceding calendar year and also provided that interest on over or under collections shall be computed monthly at the residential mortgage lending rate specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law, 41 P.S. §§ 101, et seq., from the month that the over or under collection occurs to the mid-point of the recoupment or refund period.

OSBA opposed the Company’s proposal to apply the surcredit as a negative percentage of the customer’s base rate delivery charge and the Company’s proposal to apply the Rider TRS

to flexible rate customers. OSBA St. 1 at 12-13.<sup>8</sup> OSBA contended that the surcredit should apply to both the customer charge and the base rate delivery charge, and that flexible rate customers should not benefit from the surcredit. I&E and OCA did not take a position on the application of the surcredit to customer charges, or the application of the Rider to flexible rate customers.

Peoples Natural Gas initially opposed OSBA's positions. The Company contended that most of the income tax deductions related to repair of mains, which are not recovered through customer charges. PNG St. 2-R at 10-11. The Company also argued that flexible rate customers do contribute to the cost of service, and income taxes, and therefore should receive a portion of any surcredit. However, in rejoinder testimony, Peoples Natural Gas withdrew its opposition to OSBA's proposals. The Settlement adopts the changes to Rider TRS set forth in the Company's rejoinder, which applies the Rider TRS to both the customer charge and the base rate delivery charge, and does not apply the Rider TRS to flex (i.e., discounted) customers.

The changes to the application of Rider TRS are a reasonable compromise to achieve settlement and should be adopted. The expansion of Rider TRS to apply the surcredit to customer charges as well as base rate delivery charges does not alter the total amount to be provided to customers through the surcredit. The change just expands the revenue base used to compute the surcredit percentage. The exclusion of flexible rate customers from the surcredit recognizes that these customers are served under discounted rates that are less than tariffed rates. Thus, excluding these customers from the application of the Rider will maximize the base rate revenues recovered from these customers.

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<sup>8</sup> Neither I&E nor OCA addresses the Company's proposal to apply the surcredit as a negative percentage of the customer's base rate delivery charge.

### **C. SUBSEQUENT CHANGES TO BENEFIT OF THE CATCH UP DEDUCTION UNDER THE SETTLEMENT**

As explained above in Section III A, to the extent that the benefit of the Company's catch up deduction is affected by (i) any subsequent disallowance by a future IRS audit, (ii) any changes in tax rate, or (iii) any change in rules or guidance that require a method change and, therefore, a change of benefit, the Company's Tax Repair Petition sought permission to defer those impacts for future refund or recovery for customers in the same proportion as the sharing proposed in the Petition. The Company explained that this approval is a necessary protection for both the Company and its customers to ensure that the benefits that are shared are the actual benefits realized in the tax return. PNG. St 1 at 19. While the Company is confident in its change in accounting method filed with the IRS, the IRS has not issued final guidance for the natural gas pipeline industry with respect to the material threshold used to define a unit of property for repairs purposes. *See* Section V.A. *supra*. To the extent either a subsequent disallowance by a future IRS audit, or any change in rules or guidance issued by the IRS, would result in the Company having to amend its tax filing, the tax benefits that would be realized would be affected. PNG St. 1 at 19. Similarly, any change in tax rates may alter the tax benefits of the catch up deduction and would require adjustment to ensure the benefits shared are the actual benefits received. PNG St. 1 at 19. The Company's proposal protects both the Company and its customers from the impacts of these possible changes.

In large part, OCA and I&E agreed that any changes to the catch up amount should be tracked. I&E St. 1 at 5; OCA St. 1 at 28. However, OCA recommended that a time limit for this regulatory approval be established and recommended that it be "through the completion of the Company's next base rate case." OCA St. 1 at 28-29.

The Company opposed OCA's proposed time limit upon recognition of adjustments to the benefits of the catch up deduction. Peoples Natural Gas witness Mr. Packer explained that the IRS has not adopted clear, "safe harbor" provisions defining the units of property to be used under the repair allowance provisions. PNG St. 1-R at 22. As such, the Company will not know if its unit of property definition and its deduction is accepted until after any audit of its 2020 return. PNG St. 1-R at 22. Any audit is likely to occur well after the filing of the Company's next base rate case. By disconnecting the Company's ability to reconcile any differences between the calculated tax benefit and a recalculation of the tax benefit due to a future audit, the OCA's proposal could result in the flow through of more or less than the tax benefits actually received. This would be contrary to the reconciliation provisions of Section 1307(e) of the Public Utility Code, which direct the refund or recoupment of differences between actual revenues and costs subject to an automatic adjustment clause. 66 Pa.C.S. § 1307(e).

The Settlement adopts the Company's proposal to defer any subsequent changes to the benefit of the catch up deduction for future refund to or recovery from customers. This provision is in the public interest and should be approved. As explained above, this provision recognizes that no artificial time limit should be placed upon the recognition of any changes to the benefits from the tax repair deduction.

#### **D. TREATMENT OF THE CURRENT AND GOING FORWARD BENEFITS UNDER THE SETTLEMENT**

The Tax Repair Petition filed by the Company and the Company's direct testimony were limited to seeking regulatory and accounting approvals regarding its proposed treatment of the benefits of the catch up deduction resulting from its tax repairs election. As explained in Section III.A. above, however, the election also permits the Company to deduct all costs incurred in 2020 and thereafter that qualify as repairs under the Company's new accounting method (i.e., its use of

larger units of property) as an expense in the year incurred. PNG St. 1 at 10. Although the Company began to record the repairs deduction on a flow through basis beginning in the first quarter of 2020, the Company did not seek Commission approval for any treatment of the ongoing benefits as a part of this proceeding because no Commission approval is required or needed for the Company to make the tax repair election. PNG St. 1-R at 23.

OCA, I&E and OSBA each raised proposals regarding these benefits as a part of their direct testimony. I&E argued that the Company's proposal to use flow-through accounting for the ongoing incremental tax benefits could result in excessive returns between rate base filings and recommended that the Company be required create a regulatory liability account to record the incremental tax savings of the repairs election to be returned over a period determined in the Company's next base rate case. I&E St. 1 at 5-7. I&E also attempted to highlight the use of normalization, rather than flow-through, accounting in a 2010 Columbia Gas case settlement. I&E St. 1 at 8. OCA similarly proposed that the Commission should order the Company to apply normalization accounting to the ongoing incremental tax benefits of the repairs election. OCA St. 1 at 26. OSBA witness Mr. Knecht implicitly advanced a proposal that would return all of the ongoing benefits to customers as a part of his analysis of his Scenario 3. OSBA St. 1 at 8-10.

There are no fully litigated utility cases before the Commission determining whether flow through or normalization accounting should be used by utilities with regard to the tax repair election. The use of flow-through accounting with respect to the deductions resulting from the tax repairs election has been implemented by numerous public utilities in Pennsylvania. For example, the Commission reviewed and approved proposals to use flow-through accounting for the benefits associated with the repairs election in the following proceedings:

- *Pa. PUC, et al. v. Columbia Gas of Pennsylvania*, Docket Nos. R-2009-2149262, et al. (Order entered Aug. 18, 2010) (approving settlement which permitted use of flow-through accounting).
- *Pa. PUC, et al. v. PECO Energy Company—Electric Division*, Docket Nos. R-2010-2161575, et al. (Order entered December 21, 2010) (approving settlement which permitted the use of flow-through accounting);
- *Pa. PUC, et al. v. Aqua Pennsylvania, Inc.*, Docket Nos. R-2011-2267958 (Order entered June 7, 2012) (approving settlement that permitted the use of flow-through accounting for the benefits of the repair election); and
- *Pa. PUC, et al. v. York Water Company*, Docket Nos. R-2018-3000019, et al. (Order entered Jan. 17, 2019) (approving settlement that reflect flow through treatment of the go-forward effects of the tax repair deduction).

Other parties identified base rate cases where utilities have proposed to use normalization accounting. Those proposals have been adopted, without opposition, in other settlements.

Peoples Natural Gas’s position is that other parties’ proposals to require the Company to normalize the current and ongoing benefits of the tax repairs would violate the “actual taxes paid doctrine” affirmed in binding Pennsylvania precedent and long-standing Commission application of this precedent. “It is established in this Commonwealth that one of the costs of the service rendered by a utility is the actual income tax paid to the Federal Government.” *Pittsburgh v. Pa. PUC*, 144 A.2d 648, 659 (Pa. Super. 1958) (citing *Riverton Consolidated Water Company v. Pa. PUC*, 140 A.2d 114, 123 (Pa. Super. 1958)).

In the seminal case, *Barasch v. Pa.PUC*, 507 Pa. 496, 491 A.2d 94 (Pa. 1985) (“*Penn Power*”), the Supreme Court of Pennsylvania concluded that where the use of normalization is not required under penalty of law (*e.g.*, such as the penalties Congress imposes for federal income tax purposes with respect to attempts to flow through the benefits of accelerated depreciation of post-1980 property), the use of normalization would violate the actual taxes paid doctrine. *See Penn Power*, 491 A.2d at 521. Importantly, in *Penn Power*, the Pennsylvania Office of Consumer Advocate advanced the argument that “normalization, absent IRC § 167(l)



and §168(e)(3)(c) penalties”—*i.e.*, a requirement established by federal law—“requires the consumer to pay for purely speculative future tax obligations” and, therefore, violates the ‘actual taxes paid’ doctrine.” *Penn Power*, 491 A.2d at 508.

In this proceeding, other parties advocate a position that Peoples Natural Gas contends would violate the actual taxes paid doctrine. First, there is no federal law that requires the use of normalization accounting, and/or subjects Peoples Natural Gas to a penalty if it does not use it, with respect to the ongoing benefits of the tax repairs election. PNG St. 1-R at 27. Second, there is no record evidence that the taxes to be paid using flow through for the tax repair deduction will be greater than the taxes that would be paid using normalization. In fact, the Company’s evidence demonstrates that from now into the indefinite future, the tax repair deduction will provide greater rate benefits than normalization. PNG St. 1-R, pp. 9-10.

It is also Peoples Natural Gas’s position that proposals to capture changes to tax expense back to the date of the Company’s election of the tax repair deduction would violate the Commission-made rate doctrine. The Commission-made rates doctrine was established first in the case of *Cheltenham & Abington Sewerage Co. v. Pennsylvania Public Utility Commission*, 25 A.2d 334 (Pa. 1942). In *Cheltenham*, the Supreme Court held that “the right to reparations does not extend to a period prior to the date on which the commission filed its order directing a reduction in allowable gross revenues.” *Id.* at 336. See also *West Penn Power Company v. Pennsylvania Public Utility Commission*, 100 A.2d 110 (Pa. Super. 1953) (holding that Commission-approved rates could not be retroactively changed by ordering refunds).

Peoples Natural Gas’s current base rates are Commission-made rates. The settlement of Peoples Natural Gas’s most recent base rate case contains the following provision in paragraph 81:

The Joint Petitioners acknowledge and agree that this Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding resulting in the establishment of rates that are Commission-made, just and reasonable.

*Pa. PUC, et al. v. Peoples Natural Gas Company LLC*, Docket Nos. R-2018-3006818, et al. (Joint Petition for Approval of Settlement Stipulation dated July 19, 2019).<sup>9</sup> No complaint has been filed against Peoples Natural Gas's current base rates, and no pro forma ratemaking analysis has been undertaken to determine if current rates are unjust or unreasonable. Therefore it is Peoples Natural Gas's position that, under the Commission-made rate doctrine, no change can be made to Peoples Natural Gas's base rates until a full ratemaking analysis has been made, and no retrospective change to those rates is allowed.

In addition to the concern that the use of the normalization method would violate the actual taxes paid doctrine and the Commission-made rate doctrine, when considering the Company's NOL, normalization would also negate the desired reduction in rate base the other parties claim to prefer by virtue of normalization, because no deferred taxes associated with normalizing the repairs deduction will offset rate base until the Company's NOL is extinguished. PNG St. 1-R at 28.

The Company further argued that other parties' proposals to normalize the ongoing deductions resulting from the tax repairs election would be inconsistent with their proposal to flow through 100% of the benefits of the catch up deduction. PNG St. 1-R at 11.

The Settlement provides for the use of flow through accounting through the end of the Company's next base rate case (§17(b)) and for the Company to reflect the ongoing tax repair deduction in its revenue requirement in its next base rate case (§17(c)). As explained in the next

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<sup>9</sup> *Pa. PUC, et al. v. Peoples Natural Gas Company LLC*, Docket Nos. R-2018-3006818, et al. (Opinion and Order entered Oct. 3, 2019) (approving settlement without modification).

section of the Statement in Support, the Settlement provides for the filing of a base rate case and the review of the Company's revenue requirement in that case. These provisions are consistent with prior precedent, as explained above, and produce a reasonable result in consideration of other provisions of the Settlement, as explained herein. These provisions of the Settlement should be approved.

#### **E. BASE RATE CASE FILING PROVISION OF THE SETTLEMENT**

As explained previously, the agreement to provide 100% of the benefit of the catch up deduction through the surcredit means that the Company cannot commit to a rate case stay out. However, certain parties expressed concern that the Company could still avoid resetting rates for an extended period due to the ongoing use of flow through accounting. To address this concern, the Settlement contains a commitment that Peoples Natural Gas will file a base rate case no later than December 31, 2023.

OCA also expressed concerns that, with the use of flow through accounting for the tax repair deduction on a going-forward basis, the Company's projection of the tax repair deduction in that rate case may misstate the actual ongoing deductions available, because the deduction is dependent on the actual amount of replaced property that would qualify for the tax repair deduction. This was an issue raised in the last base rate case of Peoples Natural Gas's affiliate, Aqua Pennsylvania, Inc. To proactively address this concern, Peoples Natural Gas has committed in the Settlement that it will propose a tracker mechanism to account for variances between the estimated ongoing net tax repair benefit incorporated into the Company's revenue requirement in the next base rate case and the actual net tax repair benefit realized on the Company's tax returns on a going-forward basis from the effective date of new base rates, similar to the tracker mechanism adopted in the settlement of the Aqua Pennsylvania, Inc. base

rate case at Docket No. R-2018-3003558. All parties reserve the right to oppose the proposed tracker mechanism or to propose changes.

This provision is a reasonable condition to the approval of flow through accounting for the tax repair deduction. The provision has previously been approved for the Company's affiliate, and provides further assurance that the Company's ongoing projections of tax repair deductions will neither benefit or harm the Company if they are inaccurate.

**F. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE PROVISION UNDER THE SETTLEMENT**

The Settlement recognizes that nothing in the Settlement is intended to change the normal operation of the current Distribution System Improvement Charge ("DSIC"). The Company anticipates that the ability to claim increased tax deduction due to the election of the repair allowance, and the resulting decrease to income tax expense, will allow the Company to avoid increases to its DSIC rate for several years. The Company anticipates that the Company will again begin to apply the DSIC in 2023.

**G. UNCOLLECTIBLE ACCOUNTS EXPENSE OFFSET UNDER THE SETTLEMENT**

By Secretarial Letter dated May 13, 2020, at Docket No. M-2020-3019775, the Commission authorized utilities to establish regulatory assets for incremental uncollectible account expenses incurred above those embedded in rates since the entry of the Commission's Emergency Order ratified March 26, 2020 at Docket No. M-2020-3019244. The Emergency Order prevented utilities from terminating service to customers due to non-payment of bills, in response to the then-emerging COVID-19 pandemic.

As a further consideration to the Settlement, the Company has agreed to provide rate credits totaling \$5.0 million, applicable to all rate classes, to be used toward aged past due

balances created starting in March, 2020. The maximum credit that any customer may receive is 70% of the past due balance accrued on an eligible customer's bill since March, 2020. The Company will provide information on the credit methodology and application to the Joint Petitioners prior to implementation. Customer collections would continue on arrearages remaining after the credit is applied pursuant to the Commission's regulations. However, the Company will work to enroll eligible customers in available programs to provide payment assistance, including but not limited to its customer assistance program, the Low Income Home Energy Assistance Program ("LIHEAP"), and Dollar Energy.

This provision of the Settlement is in the public interest. The economic effects of the pandemic have affected some customers in all customer classes, whether due to lost employment, large medical expenses, or lost business. The settlement establishes a \$5.0 million fund, to be funded by the Company's shareholders, to assist customers with overdue balances developed since the beginning of the pandemic. Application of the fund is intended to reduce the deferred balance established by the Company pursuant to the Commission's May 13, 2020 Secretarial Letter. Various Pennsylvania utilities have established temporary assistance programs in response to the COVID-19 pandemic, and Peoples Natural Gas is pleased to join these other utilities in establishing a program.

#### **H. LOW-INCOME ASSISTANCE PROVISION UNDER THE SETTLEMENT**

In addition to the \$5.0 million fund established by the Settlement to provide unpaid bill assistance, the Company also has agreed to provide an additional \$500,000 non-recoverable contribution to Dollar Energy Fund to further assist low-income customers. The Company further has agreed to expand Dollar Energy's income eligibility to 250% of the Federal Poverty Income Guidelines ("FPIG") through December 31, 2021, from the current level of at or below

200% of FPIG. This additional contribution, on top of the Company's currently planned Dollar Energy Fund contribution of \$750,000, will further assist low-income residential customers during the current pandemic.

#### **IV. CONCLUSION**

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a Settlement that resolves all of the issues in this proceeding in a fair and equitable manner. The Settlement applies the benefits resulting from the Company's tax repair election to provide meaningful rate relief and assistance to customers as they face the effects of the pandemic. A fair and reasonable compromise has been achieved in this case on these issues, as is evident by the fact that all active parties have agreed to the resolution of the issues in this proceeding.

Based on the foregoing, and as set forth in Section V of the Settlement, Peoples Natural Gas respectfully requests that Your Honor and the Commission approve the Joint Petition for Settlement without modification.

Respectfully submitted,

*Michael W. Hassell*

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*For Peoples Natural Gas Company LLC*

Of Counsel:

Post & Schell, P.C.

Dated: March 11, 2021

# Appendix D



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Petition of Peoples Natural Gas</b>	<b>:</b>	
<b>Company LLC for Accounting and</b>	<b>:</b>	
<b>Regulatory Approvals and Approval of</b>	<b>:</b>	<b>P-2020-3021191</b>
<b>Related Tariff Surcredits Associated</b>	<b>:</b>	
<b>with Tax Repair Election</b>	<b>:</b>	

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**BUREAU OF INVESTIGATION AND ENFORCEMENT  
STATEMENT IN SUPPORT OF  
JOINT PETITION FOR SETTLEMENT**

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**TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE MARK HOYER:**

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), by and through its Prosecutor Carrie B. Wright, hereby submits that the terms and conditions of the foregoing *Joint Petition For Settlement* (Joint Petition or Settlement Agreement) is in the public interest and represent a reasonable and equitable balance of the interests of Peoples Natural Gas Company, LLC (Peoples or Company), People's customers, and the parties to the Settlement Agreement. The parties have conducted extensive formal and informal discovery and have participated in numerous settlement conferences. The extensive and open discussions culminated in the attached Settlement Agreement. I&E requests approval of the *Joint Petition* based on I&E's

determination that the Settlement Agreement meets all the legal and regulatory standards necessary for approval. “The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest.”<sup>1</sup> The Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.”<sup>2</sup> As a product of negotiation and compromise between multiple parties, this Settlement Agreement reflects concessions from Peoples’ original request and concessions from some of I&E’s recommendations. Accordingly, the Bureau of Investigation and Enforcement believes that the terms and conditions of the Joint Petition are in the public interest. In support of this position, I&E offers the following comments:

## **I. INTRODUCTION**

### **A. I&E’s Role**

Through its bureaus and offices, the Commission has the authority to take appropriate enforcement actions that are necessary to ensure compliance with the Public Utility Code and Commission regulations and orders.<sup>3</sup> The Commission established I&E to serve as the prosecutory bureau to represent the public interest in ratemaking and utility service matters, and to enforce compliance with the Public Utility Code.<sup>4</sup> By representing the public interest in rate proceedings before the Commission, I&E works to

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<sup>1</sup> *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

<sup>2</sup> *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

<sup>3</sup> Act 129 of 2008, 66 Pa. C.S. § 308.2(a)(11); 66 Pa. C.S. §§ 101 *et seq.*; 52 Pa. Code §§ 1.1 *et seq.*

<sup>4</sup> *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

balance the interest of customers, utilities, and the regulated community as a whole to ensure that a utility's rates are just, reasonable, and nondiscriminatory.<sup>5</sup>

## **B. History of the Proceeding**

On August 6, 2020 Peoples filed the instant Petition. On August 26, 2020, I&E filed an Answer to People's Petition. Pursuant to a Prehearing Conference Order dated September 17, 2020, Deputy Chief Administrative Law Judge Mark Hoyer (the ALJ), was assigned to develop an evidentiary record and Recommended Decision in this proceeding. The ALJ conducted a Prehearing Conference on October 7, 2020. Counsel for I&E participated the Prehearing Conference, and other active participants, included the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Pennsylvania Independent Oil and Gas association (PIOGA) also participated. At the Prehearing Conference, a procedural schedule, and the procedures applicable to this proceeding were set forth and subsequently memorialized in Prehearing Order dated October 8, 2020. After the Prehearing Conference, I&E, the OCA, the OSBA, and PICGUG engaged in a substantial amount of discovery and participated in settlement discussions.

In accordance with the procedural schedule outlined in Prehearing Order #1, the parties exchanged direct, rebuttal, surrebuttal, and rejoinder testimony. I&E introduced the following statements of testimony:

- I&E Statement No. 1, the Direct Testimony of John Zalesky,

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<sup>5</sup> See 66 Pa. C.S. §§ 1301, 1304.

- I&E Exhibit No. 1, the Exhibit accompanying Mr. Zalesky's Direct Testimony, and
- I&E Statement No. 1-SR, the Surrebuttal Testimony of Mr. Zalesky.

At the evidentiary Hearing on January 28, 2020, the parties moved for the admission of evidence into the record. I&E entered the above-referenced testimony into the record. Negotiations continued, ultimately culminating in all Joint Petitioners agreeing to a full settlement of all issues.

Pursuant to the Joint Petitioners' agreement to settle the case, a request was made to suspend the litigation schedule, negating the need for the parties to submit Main or Reply Briefs.

## **II. DISCUSSION**

As explained above, I&E is charged with representing the public interest in Commission proceedings related to rates, rate-related services, petitions, and applications affecting the public interest. In negotiated settlements, it is incumbent upon I&E to identify how amicable resolution of any such proceeding benefits the public interest and to ensure that the public interest is served. Based upon I&E's analysis of Peoples' Petition, discovery, and testimony, acceptance of this proposed Settlement is in the public interest and I&E recommends that the Administrative Law Judge and the Commission approve the Settlement in its entirety.

It is the policy of the Commission to encourage settlements.<sup>6</sup> The Commission issued the following policy statement that articulates general settlement guidelines and procedures for major rate cases:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases.<sup>7</sup>

While this is not a rate case, this policy statement highlights the importance of settlement in Commission proceedings. The instant Petition was filed on August 26, 2020, and over the past approximately six months, the parties have engaged in extensive formal and informal discovery, preparation of testimony, and lengthy settlement discussions. All signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the course of the settlement process. As such, the issues raised by I&E have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the *Joint Petition*. I&E represents that the Settlement satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the

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<sup>6</sup> 52 Pa. Code § 5.231.

<sup>7</sup> 52 Pa. Code § 69.401.

reasons articulated herein, I&E maintains that the proposed Settlement is in the public interest.

**A. Treatment of the Catch-Up Deduction (Joint Settlement ¶ 17(a))**

One hundred percent (100%) of the benefit from the approximately \$380.7 Million catch-up deduction will be used to provide a surcredit to customers over a five-year period. The surcredit is designed to provide a rate reduction of approximately \$27.845 Million per year.

As explained by I&E witness John Zalesky, it was important that 100% of the catch-up deduction benefit be returned to ratepayers because they were the one who originally funded these expenditures.<sup>8</sup> In addition, the proposal to pass back 100% of the benefits to ratepayers over a five-year period is appropriate. Ratepayers may move out of the Company's service territory. By passing the amount back over a fairly short, five-year time period, it gives the Company the opportunity to pass the amount back over a timeframe in which it is likely to go back to a greater number of ratepayers who originally funded the expenditures that produced the benefit before those ratepayers would move out of the Company's service territory.

This provision is consistent with the I&E recommendation in testimony and provides the greatest benefit to Peoples ratepayers, therefore, I&E supports this term as being in the public interest.

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<sup>8</sup> I&E St. No. 1, p. 4.

**B. Treatment of the Current and Going Forward Benefits (Joint Settlement ¶ 17(b))**

Per the *Joint Settlement*, Peoples will continue to utilize the flow through methodology for the current and going forward effect of the tax repair election. In testimony, I&E witness Zalesky originally expressed concern over Peoples decision to use the flow through methodology. Witness Zalesky explained that if Peoples were allowed to utilize the flow through methodology, it may result in Peoples earning a higher rate of return than would be appropriate.<sup>9</sup> He further noted that this potential overearning when coupled with Peoples projected rate case stay out until 2026 could cause its ratepayers to overpay for services within that period of time.<sup>10</sup> Lastly, Mr. Zalesky expressed concern that ratepayer would suffer rate shock when Peoples finally filed a base rate case because of the potential increase in O&M expenses and the long interval between base rate cases.<sup>11</sup>

As explained in more detail below, Peoples has affirmatively committed to file a base rate case by the end of 2023. The majority of I&E's concerns with allowing People to utilize the flow through method resulted from the long interval Peoples was projecting between base rate cases. Because Peoples, per this settlement, has affirmatively agreed to file a base rate case within a specified time period, those concerns have been mitigated as the parties will, at that time, have the opportunity to review Peoples financial metrics. Therefore, I&E supports this term as being in the public interest.

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<sup>9</sup> I&E St. No. 1, p. 6.

<sup>10</sup> I&E St. No. 1, p. 7.

<sup>11</sup> I&E St. No. 1, p. 7.

### **C. Rate Case Filing (Joint Settlement ¶ 17(d))**

Per the Settlement, Peoples has affirmatively committed that it will file a base rate case no later than December 31, 2023. In that filing, Peoples will also propose a tracker mechanism to account for variances between the estimated net tax repair benefit incorporated into the Company's revenue requirement and the actual net tax repair benefit realized on the Company's tax returns on a going-forward basis from the effective date of new base rates, which will be similar to the tracker mechanism adopted in the settlement of the Aqua Pennsylvania, Inc. base rate case at Docket No. R-2018-3003558.

As explained in testimony, I&E was concerned about the long rate case stay out Peoples identified as a part of this Petition.<sup>12</sup> Base rate cases are important for various reasons. During a base rate case, the Parties and the Commission are given the opportunity to examine the full financial picture of a utility. In addition, long rate case stay outs can result in very large increases when the Company finally decides to file for a rate increase. In those instances, it can be very difficult for customers to deal with such a large increase all at once, whereas a small increase can often be easier to budget for.

In addition, I&E expressed concern that this tax proposal could result in the Company over-earning. By the Company specifying a timeframe by which it will definitely be in for a base rate case that concern is mitigated as Peoples financial circumstances will be subject to inspection and review at that time. Accordingly, I&E supports this term as being in the public interest.

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<sup>12</sup> I&E St. No. 1, pp. 6-7.



#### **D. Uncollectible Accounts Expense- (Joint Settlement ¶17(g))**

As explained in the *Joint Petition for Settlement*, by Secretarial Letter dated May 13, 2020, at Docket No. M-2020-3019775, the Company was authorized to establish a regulatory asset for incremental uncollectible account expenses incurred above those embedded in rates since the entry of the Commission's Emergency Order ratified March 26, 2020 at Docket No. M-2020-3019244. Per the instant Settlement, the Company has agreed that it will provide a rate credit to all rate classes with past due balances starting in March 2020. The total credit will amount to \$5.0 million and will it be funded solely by the Company's shareholders. As explained in the *Joint Petition*, the credit would equate to a maximum of 70% of the past due balance on an eligible customer's bill since March 2020 and will effectively be a forgiveness of a portion of arrearages accumulated as a result of the COVID-19 pandemic.

There has been a general concern expressed by some Parties, particularly in base rate proceedings that have occurred during the COVID-19 pandemic, about the ability of customers impacted by the pandemic to pay their utility bills. Peoples' proposal is appropriate as the funds come from shareholders. Therefore, the ratepayers are not ultimately left with the bill at the end of the day. In addition, it targets those customers who accrued an arrearage during the pendency of the COVID-19 pandemic; thereby, targeting those most in need of assistance.

### **E. Low-Income Assistance (Joint Settlement ¶17(h))**

Per the *Joint Settlement*, Peoples has agreed to provide a non-rate recoverable contribution of \$500,000 to Dollar Energy and expand eligibility to 250% of the Federal Poverty Guidelines. This will provide needed assistance for low-income customers who may be particularly vulnerable to the COVID-19 pandemic.

### **III. CONCLUSION**

Based on I&E's analysis of the Petition filed by Peoples, acceptance of this proposed Joint Petition is in the public interest. Resolution of these provisions by settlement rather than continued litigation will avoid the additional time and expense involved in formally pursuing all issues in this proceeding to an ultimate conclusion and is in the best interests of Peoples and its ratepayers.

The Settlement Agreement is conditioned upon the Commission's approval of all terms and conditions contained therein and should the Commission fail to approve or otherwise modify the terms and conditions of the Settlement, the Joint Petition may be withdrawn by I&E or any of the signatories.

If the ALJ recommends that the Commission adopt the Settlement Agreement as proposed, I&E has agreed to waive the right to file Exceptions. However, I&E has not waived its rights to file Exceptions with respect to any modifications to the terms and conditions of the Settlement Agreement, or any additional matters, that may be proposed by the presiding officer in her Recommended Decision. I&E also reserves the right to

file Reply Exceptions to any Exceptions that may be filed by any active party to this proceeding.

**WHEREFORE**, the Commission's Bureau of Investigation and Enforcement supports the *Joint Petition For Settlement* as being in the public interest and respectfully requests that Deputy Chief Administrative Law Judge Mark Hoyer recommend, and the Commission subsequently approve, the foregoing Settlement Agreement, including all terms and conditions contained therein.

Respectfully submitted,



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Carrie B. Wright  
Prosecutor  
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(717) 783-6156

Dated: March 11, 2021

# Appendix E

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Peoples Natural Gas Company	:	
LLC for Accounting and Regulatory	:	
Approvals and Approval of Related Tariff	:	Docket No. P-2020-3021191
Surcredits Associated with Tax Repair	:	
Election	:	

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STATEMENT OF  
THE OFFICE OF CONSUMER ADVOCATE  
IN SUPPORT OF THE  
JOINT PETITION FOR SETTLEMENT

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The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Settlement (Settlement), finds that the proposed terms and conditions of the Settlement are in the public interest. The OCA respectfully requests that the Pennsylvania Public Utility Commission (Commission) approve the Settlement, without modification, for the reasons set forth below:

**I. INTRODUCTION**

On August 6, 2020, Peoples Natural Gas Company LLC (Peoples Natural Gas or Company) filed its Petition requesting accounting and regulatory approval to establish a regulatory liability related to certain tax benefits realized by the Company because of a recent tax repair election.<sup>1</sup> Settlement ¶ 2. As part of this request, the Company sought approval to return forty percent (40%) of the tax benefit associated with its tax repairs catch-up deduction to customers through a bill surcredit over a period of four years. Peoples Natural Gas St. 1 at 13. The Company

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<sup>1</sup> Peoples Natural Gas provides natural gas service to approximately 629,000 customers in all or portions of the following Pennsylvania counties: Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Clarion, Fayette, Greene, Indiana, Jefferson, Lawrence, Mercer, Somerset, Venango, Washington, and Westmoreland. Petition at ¶ 1.

proposed to retain the remaining sixty percent (60%) of the tax benefit associated with the catch-up deduction and defer amortization of this portion until 2023. Peoples Natural Gas St. 1 at 14. Lastly, the Company requested that to the extent that the benefit of the Company's catch-up deduction is affected by (1) any subsequent disallowance by a future IRS audit, (2) any change in tax rate, or (3) any change in rules or guidance that require a method change, the Company be permitted to defer any of those impacts for future refund or recovery from customers in the same proportion as its proposed sharing. Peoples Natural Gas St. 1 at 18-19.

On August 26, 2020, the OCA filed an Answer raising issues with the nature of the Company's proposal. In addition, the Commission's Bureau of Investigation and Enforcement (I&E) and the Office of Small Business Advocate (OSBA) filed Answers to the Company's Petition on August 26, 2020. The Pennsylvania Independent Oil and Gas Association (PIOGA) also filed a Petition to Intervene.

The Petition was assigned to the Office of Administrative Law Judge and was further assigned to Deputy Chief Administrative Law Judge Mark A. Hoyer (ALJ Hoyer) for investigation and the scheduling of hearings. On October 7, 2020, a Prehearing Order was issued that modified the Commission's discovery regulations and set forth a litigation schedule in this matter.

On December 4, 2020, after review and investigation of the Company's filing and discovery responses, the OCA served the Direct Testimony of Ralph C. Smith (Confidential and Public Versions), OCA Statement 1, to parties of record.<sup>2</sup> Subsequently, on January 21, 2021, the OCA served the Surrebuttal Testimony of Ralph C. Smith (Confidential and Public Versions), OCA Statement 1-SR, to parties of record.

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<sup>2</sup> Mr. Smith is an independent attorney and Certified Public Accountant under contract with the OCA who has performed work in the field of utility regulation in 40 states, Washington D.C., and Canada. OCA St. 1 at 2-3. A complete description of Mr. Smith's qualifications is provided in OCA Statement 1, Attachment RCS-1.

On January 26, 2021, Peoples Natural Gas, the OCA, OSBA, I&E, and PIOGA informed ALJ Hoyer that the Parties had agreed to waive cross-examination of all witnesses and would seek to admit the verified written testimony into the evidentiary record at the evidentiary hearing. On January 27, 2021, the pre-served testimony of the parties, including the OCA's pre-served testimony, was admitted into the record in this proceeding.

On February 17, 2021, the Parties informed ALJ Hoyer that a Settlement was reached resolving all issues in this proceeding. Subsequently, the Parties requested that ALJ Hoyer suspend the briefing schedule and requested that the Settlement and accompanying Statements in Support be filed on March 11, 2021.

The Office of Consumer Advocate (OCA) hereby submits this Statement in Support of the Joint Petition for Settlement as it is in the public interest and in the interest of Peoples Natural Gas' ratepayers. The Commission should approve the Settlement, without modification.

## **II. SETTLEMENT TERMS AND CONDITIONS**

The terms and conditions of the Settlement satisfactorily address the issues raised by the OCA in this proceeding. The OCA recognizes that this Settlement contains modifications from the original position presented by the OCA. The OCA submits, however, that the agreed upon Settlement achieves a fair resolution of the many complex issues presented in this proceeding.

In this Statement in Support, the OCA addresses those areas of the Settlement that specifically relate to important issues that the OCA raised in this case. The OCA expects that other parties will discuss how the Settlement's terms and conditions address their respective issues and how those parts of the Settlement support the public interest standard required for Commission approval.

### **1. Treatment of the Catch-up Deduction (Settlement ¶ 17(a))**

The Settlement provides that the Company will return one hundred percent (100%) of the related tax benefit from the approximately \$380.7 million catch-up deduction to the Company's ratepayers through a surcredit. Settlement ¶ 17(a)(i). This surcredit will provide a rate reduction of approximately \$27.845 million per year over five years, beginning within 90 days after an Order is issued in this proceeding. Id. The Rider Tax Repair Surcredit (Rider TRS) will be credited to customers' bills by application to both customer charges and base rate delivery charges as set forth in Appendix A of the Settlement.<sup>3</sup> Id., at ¶ 17(a)(ii).

The OCA submits that this provision is in the public interest. The Company originally proposed to return only 40% of the related tax benefit associated with the Company's catch-up deduction. As the OCA's witness Ralph Smith testified, it would be inappropriate to allow the Company to retain any of the benefit of these amounts as it represents previous tax expense that was collected from customers that the Company is now avoiding. See OCA St. 1-SR at 9.

Under the terms of the Settlement, the Company will now return to the Company's ratepayers the entire related tax benefit associated with the Company's catch-up deduction in a simple and transparent manner. This will provide additional relief to customers that are currently struggling to make ends meet during the COVID-19 Pandemic. Accordingly, this provision is in the public interest.

## **2. Treatment of the Current and Going-Forward Benefit (Settlement ¶ 17(b-d))**

The Settlement provides that the income tax effects associated with the Company's current and going forward tax repair deductions will continue to flow-through to the Company's financials until the effective date of rates established in the Company's next base rate case filing. Settlement ¶ 17(b). In its next base rate proceeding, however, the Company will propose a tracker mechanism

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<sup>3</sup> Flexible rate customers will not be eligible for the surcredit. Settlement ¶17(a)(ii).



that will account for variances between the estimated net tax repair benefit incorporated into the Company's revenue requirement and the actual net tax repair benefit realized on the Company's tax returns on a going-forward basis from the effective date of new base rates. This is similar to the tracker mechanism adopted in the most recent base rate case of Aqua Pennsylvania, Inc. (Aqua PA) at Docket No. R-2018-3003558. Settlement ¶ 17(d). Moreover, the Company affirmatively commits to file a rate case no later than December 31, 2023. Id.

In its Direct Testimony, OCA witness Ralph C. Smith advocated against flow-through treatment of the going-forward tax benefits related to the Company's annual, ongoing tax repairs deductions. See OCA St. 1 at 19-21. The OCA was concerned that the Company would continue to significantly over-earn for the foreseeable future as current rates would not account for the substantial reductions to the Company's tax expense. See OCA St. 1-SR at 4. As OCA witness Smith noted, a similar situation occurred with respect to Aqua PA, which led to a large period of overearnings. OCA St. 1 at 19-20. The only way that situation could be remedied was to establish a tracker mechanism in Aqua PA's most recent base rate proceeding that would track variances between the Company's claimed tax repairs deductions and subsequent years. See Pa. Pub. Util. Comm'n v. Aqua Pennsylvania, Inc., Docket No. R-2018-3003558, *et al.*, Opinion and Order at 17, 60 (Pa. PUC May 9, 2019) (Aqua PA 2018); see also Settlement, App. B.

Rather than flowing-through these tax benefits as proposed by the Company, OCA witness Smith recommended that the Company normalize its ongoing, annual tax repairs deductions, which would preserve these tax-timing differences as Accumulated Deferred Income Taxes. OCA St. 1 at 21. As stated by OCA witness Smith:

Under such normalization treatment, [Peoples Natural Gas] receives the cash flow benefit in each year in which its income tax expense is reduced by annually claiming tax deductions for repairs. [Peoples Natural Gas]'s customers benefit over time as [Peoples Natural Gas]

records deferred income tax expense and ADIT, and [Peoples Natural Gas]'s ADIT liability that is used to offset rate base continues to grow in each year in which [Peoples Natural Gas]'s tax deduction for repairs exceeds its book expense for repairs.

OCA St. 1 at 21. This would have prevented Peoples Natural Gas from having excess earnings from tax repairs deductions in the years between rate cases. OCA St. 1 at 27.

The Settlement does not adopt the OCA's position, but the Company does commit to file its next base rate case before Dec. 31, 2023. This provision is critical to address the overearnings issue identified by the OCA because it will require the Company to reflect the reduced income tax expense in rates sooner and minimize any overearnings from that point on. Settlement ¶ 17(d). Thus, while it is unusual to require a utility to file a rate case before a date certain, given the potential for the Company to over earn for the foreseeable future until the tax repair election is reflected in base rates, it is important that this provision be adopted.

Secondly, the Settlement provides that during the Company's next base rate proceeding, it will commit to proposing a tracker mechanism similar to the one reached in the Aqua PA rate case in 2018. Id. This provision is also vitally important as the Company's tax repair deductions can vary substantially from year to year, making it difficult to project an annual level of tax expense during the test year in a base rate proceeding. See OCA St. 1 at 18 (Confidential). Accordingly, the tracker will ensure that if the Company's income tax repairs deductions are substantially higher than projected in a test year between base rate proceedings, it will prevent the Company from realizing future overearnings and require it to return any related tax benefit to customers in future years. See Settlement, App. B.

As settlements represent a compromise among the Parties, and given the other concessions made by the Company, the OCA supports adoption of the Settlement, without modification, including this provision. It should be noted that this Settlement does not represent binding

precedent and the parties are free to raise, without prejudice, any position on the merits of these issues in future proceedings to the extent it does not violate the terms and conditions of this agreement. Settlement ¶ 26.

### **3. COVID-19 Arrearage Forgiveness (Settlement ¶ 17(g-h))**

As part of the Settlement, the Company will provide a credit to customers of all rate classes that have accumulated aged past due balances during the COVID-19 Pandemic. Id. More specifically, a customer would receive a bill credit for 70 percent of their total aged past due balance that began accruing in March 2020. Id. The bill credits to be provided across all customers shall total \$5.0 million and will be funded by the Company's shareholders. Id.

As OCA witness Smith stated in Direct Testimony, his recommendations to return the tax benefits associated with the Company's tax repair election would have ensured that customers would benefit during a time when many are currently struggling to pay bills during the ongoing COVID-19 Pandemic. See OCA St. 1 at 24. Moreover, the Company's period of future overearnings would be at the expense of customers who are currently paying rates that do not reflect the Company's reduced income tax expense. See OCA St. 1-SR at 9.

As a compromise, in exchange for continuing to flow-through tax benefits associated with the Company's ongoing, annual tax repairs deductions, the Company has agreed to provide bill credits to customers that have accumulated aged past due balances since the onset of the COVID-19 Pandemic at the Company's expense. Settlement ¶ 17(g). This achieves a balance between the Company and its customers who are in need. Thus, this provision is in the public interest and should be adopted by this Commission.

### **4. Low-Income Assistance (Settlement ¶ 17(h))**

The Settlement further provides that the Company will provide a non-rate recoverable contribution of \$500,000 to Dollar Energy, which is the Company's hardship fund. Settlement ¶

17(h). The Company also agreed to expand Dollar Energy's income eligibility requirements to 250% of the Federal Poverty Income Guidelines ("FPIG") through December 31, 2021. Id.

For the reasons stated above, the OCA submits that this represents a reasonable compromise between the Company and its customers. The assistance the Company provides through its Dollar Energy fund is valuable and this provision will increase eligibility and the number of grants it can award customers that qualify. Accordingly, this provision is in the public interest and in the interest of the Company's ratepayers.

### III. CONCLUSION

The OCA submits that the terms and conditions of the proposed Settlement, taken as a whole, represent a fair and reasonable resolution of the issues raised by the OCA in this matter. Therefore, the OCA submits that the Settlement should be approved by the Commission, without modification.

Respectfully submitted,

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Acting Consumer Advocate

Date: March 11, 2021  
304981

# Appendix F

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of Peoples Natural Gas Company LLC :  
for Accounting and Regulatory Approvals and : Docket No. P-2020-3021191  
Approval of Related Tariff Surcredits Associated :  
with Tax Repair Election :**

**STATEMENT OF  
THE OFFICE OF SMALL BUSINESS ADVOCATE  
IN SUPPORT OF THE  
JOINT PETITION FOR SETTLEMENT**

**Introduction**

The Small Business Advocate is authorized and directed to represent the interests of the small business consumers of utility services in the Commonwealth of Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. Pursuant to that statutory authority, the Office of Small Business Advocate (“OSBA”) filed an Answer and Notice of Intervention to the Peoples Natural Gas Company LLC (“PNG” or the “Company”) Petition for Accounting and Regulatory Approvals and Approval of Related Tariff Surcredits Associated with Tax Repair Election (“Petition”) which was filed with the Pennsylvania Public Utility Commission (“Commission”) on August 6, 2020.

The OSBA actively participated in the negotiations that led to the proposed settlement and is a signatory to the Joint Petition for Settlement (“*Joint Petition*”). The OSBA submits this statement in support of the *Joint Petition*.

### **PNG's Proposal**

This matter involves the issue of whether and to what extent ratepayers should be permitted to share in the benefits associated income tax deferrals that result from a change in PNG accounting policy denoted the “tax repair election.” The Company made this tax repair election effective March 31, 2020. The issue of the tax repair election was not addressed in the Company’s base rates proceeding at Docket No. R-2018-3006818, which established rates based on a fully projected future test year ending October 31, 2020. The tax repair election allowed the Company to substantially accelerate its income tax deductions related to plant investment, both on a retrospective basis for an eight-year “catch-up” period and on a prospective basis for future spending.

As filed, PNG proposed:

- Forty (40) percent of the benefit of the catch-up deduction would be credited to ratepayers through a surcredit mechanism over calendar years 2021 to 2024;
- Sixty (60) percent of the benefit of the catch-up deduction would remain with the Company, recorded as a deferred asset;
- Amortization of the deferred asset would be at non-standard rates of 5%, 35% and 60% over the 2023-2025 period; and
- The surcredit mechanism would apply to all customers, including negotiated rate customers, and would apply as a percentage of the volumetric delivery charge.

PNG’s original proposal was generally silent on the issue of the prospective benefits, with the Company taking the position that these savings would be treated on a flow-through accounting basis, with all benefits remaining with the Company until the next base rates case.



### **The Joint Petition**

Mr. Robert D. Knecht, representing the OSBA, raised several concerns regarding PNG's filed proposal. First, Mr. Knecht observed that if parties to the Company's base rates proceeding had been aware that the tax repair election would be made in the fully projected future test year, both the retrospective catch-up benefits and the going-forward benefits would be reflected in base rates. As such, he opined that both benefits should be reflected in the surcredit mechanism.

Second, Mr. Knecht observed that while the Company touted the benefits of its proposal as including a delay in the filing of base rates proceeding, the Company included no rate stayout commitment. Nevertheless, Mr. Knecht acknowledged that if the Company was required to refund most or all of the benefits of the tax repair election, it would accelerate rate case filings.

Third, Mr. Knecht argued that negotiated rate customers should not be eligible for the surcredit because they already receive discounted market-based rates.

Fourth, Mr. Knecht argued that applying the surcredit only to the volumetric charge was inappropriate because certain plant costs are recovered in the Company's customer charges as well.

The *Joint Petition* sets forth a comprehensive list of issues that were resolved through the negotiation process. The *Joint Petition* addresses several of the concerns raised by the OSBA:

- The surcredit will reflect 100 percent of the benefits associated with the retrospective catch-up deduction, consistent with Mr. Knecht's recommendation. *Joint Petition*, Paragraph 17(a)(i);
- The surcredit mechanism will apply to both volumetric charges and customer charges, consistent with Mr. Knecht's recommendation. *Joint Petition*, Paragraph 17(a)(ii); and

- The surcredit mechanism will not apply to negotiated rate customers, consistent with Mr. Knecht's recommendation. *Joint Petition*, Paragraph 17(a)(ii).

Moreover, while ratepayers will not benefit from prospective benefits until the next base rates proceeding, the Company agrees to file such a proceeding no later than December 31, 2023, and the Company agrees to recognize the ongoing tax repair benefits in its filing in that proceeding. *Joint Petition*, Paragraphs 17(c) and (d).

In agreeing to this settlement, the OSBA reviewed Commission precedent regarding the flow-through treatment of tax benefits associated with the tax repair election. From that review, the OSBA concluded that there was a reasonable probability that the Commission would not require PNG to credit ratepayers for either the prospective benefits or all of the catch-up benefits.

Thus, the OSBA concludes that the settlement provisions represent a reasonable compromise between the parties' interests, given the significant litigation risks associated with this proceeding.

## **Conclusion**

For the reasons set forth in the *Joint Petition*, as well as the factors enumerated in this statement, the OSBA supports the proposed *Joint Petition* and respectfully requests that the Administrative Law Judge and the Commission approve the *Joint Petition* in its entirety.

Respectfully submitted,

/s/ Steven C. Gray

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Dated: March 11, 2021

# Appendix G



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March 11, 2021

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RE: Petition of Peoples Natural Gas Company LLC  
for Accounting and Regulatory Approvals and  
Approval of Related Tariff Surcredits Associated  
with Tax Repair Election, Docket No. P-2020-3021191

Dear Mr. Lent:

The Pennsylvania Independent Oil & Gas Association (PIOGA) commends Peoples Natural Gas Company and the other parties for reaching a settlement in this matter. This letter confirms that PIOGA does not oppose the proposed settlement or the Commission's approval of the proposed settlement.

Sincerely,

Kevin J. Moody  
General Counsel  
PIOGA

KJM/jls